



POLICE DEPARTMENT

-----X  
In the Matter of the Disciplinary Proceedings :  
- against - : FINAL  
Police Officer Eliseo Morales : ORDER  
Tax Registry No. 902046 : OF  
Police Service Area 7 : DISMISSAL  
-----X

Police Officer Eliseo Morales, Tax Registry No. 902046, Shield No. 5396, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 85625/09 and 2010-3090 as set forth on form P.D. 468-121, dated August 18, 2009 and November 17, 2010, respectively, and after a review of the entire record, has been found Guilty as Charged in Disciplinary Case No. 85625/09; and in Disciplinary Case No. 2010-3090, having pled Guilty, is found Guilty as Charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Eliseo Morales from the Police Service of the City of New York.

RAYMOND W. KELLY  
POLICE COMMISSIONER

EFFECTIVE: ON 11/01/11 @0001HRS

COURTESY • PROFESSIONALISM • RESPECT



POLICE DEPARTMENT

August 23, 2011

-----  
In the Matter of the Charges and Specifications : Case Nos. 85625/09 &  
- against - : 2010-3090  
Police Officer Eliseo Morales :  
Tax Registry No. 902046 :  
Police Service Area 7 :  
-----X

At: Police Headquarters  
One Police Plaza  
New York, New York 10038

Before: Honorable Martin G. Karopkin  
Deputy Commissioner - Trials

APPEARANCE:

For the Department:

Adam Sheldon, Esq.  
Jamie Moran, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, New York 10038

For the Respondent:

John Arlia, Esq.  
Wenger & Arlia, Esqs. LLP  
20 Vesey Street, Ste 210  
New York, New York 10007

To:

HONORABLE RAYMOND W. KELLY  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

The above-named member of the Department appeared before me on July 20, 2011, charged with the following

Disciplinary Case No 85625/09

1 Said Police Officer Eliseo Morales, while assigned to the 75th Precinct, while off-duty, on or about and between March 8, 2007 and March 12, 2007, being a public servant, did solicit a benefit from [REDACTED] upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced, to wit said Officer did solicit \$400 from [REDACTED] to help Mr [REDACTED] recover an automobile that was in Police custody

N Y S Penal Law Section 200 10 – BRIBE RECEIVING IN THE THIRD DEGREE

P G 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS

2 Said Police Officer Eliseo Morales, while assigned to the 75th Precinct, while off-duty, on or about and between March 8, 2007 and March 12, 2007, being a public servant, did accept a benefit from [REDACTED] upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced, to wit said Officer did accept \$400 from [REDACTED] to help Mr [REDACTED] recover an automobile that was in Police custody

N Y S Penal Law Section 200 10 – BRIBE RECEIVING IN THE THIRD DEGREE

P G 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL CONDUCT

1 - while on-duty and assigned to the 75th Precinct, on or about July 21, 2010, did impede or interfere with an official Department investigation in that during his official Department interview said police officer provided inaccurate or misleading information and not until he was confronted with the existence of contradictory evidence did said officer provide a more complete and accurate account of the events

P G 203-10, Page 1, Paragraph 5 – CONDUCT PREJUDICIAL  
P G 203-10, Page 1, Paragraph 2 – PROHIBITED CONDUCT

2 Said Police Officer Eliseo Morales, while on-duty and assigned to the 75th Precinct, on or about June 3, 2009, in the vicinity of 2987 Fulton Street in Brooklyn, did fail to perform his duties as a New York City Police Officer in that upon discovering investigatory evidence said police officer failed to prepare a Property Clerk's Invoice regarding said property

P G 218-01, Page 1 – INVOICING PROPERTY GENERAL PROCEDURE

3 Said Police Officer Eliseo Morales, while on-duty and assigned to the 75th Precinct, on or about June 3, 2009, in the vicinity of 2987 Fulton Street in Brooklyn, did engage in conduct prejudicial to the good order, efficiency and discipline of the Department in that upon discovering investigatory evidence and/or found property said police officer failed to safeguard said evidence and ensure that it was taken into police custody

P G 203-11, Page 1, Paragraph 5 – CONDUCT PREJUDICIAL

4 Said Police Officer Eliseo Morales, while on-duty and assigned to the 75th Precinct, on or about June 3, 2009, in the vicinity of 2987 Fulton Street in Brooklyn, did fail to perform his duties as a New York City Police Officer in that said police officer failed to timely notify the Internal Affairs Bureau after becoming aware that other uniformed members of the service were engaging in official misconduct, to wit other officers were taking investigatory evidence and/or found property for personal use and not properly taking said property into police custody

Interim Order 9 Revision to P G 207-21 – ALLEGATIONS OF CORRUPTION  
AND SERIOUS MISCONDUCT  
AGAINST MEMBERS OF THE  
SERVICE 4/7/08

5 Said Police Officer Eliseo Morales, while on-duty and assigned to the 75th Precinct, on or about or between June 3, 2009 and June 10, 2009, did impede or interfere with an official Department investigation by trying to conceal his involvement in misconduct in that after learning that property that had been taken was part of a failed integrity test, he failed to turn that property into the Department and instead gave the property Police Officer Corey Smith to be vouchered

P G 203-10, Page 1, Paragraph 5 – CONDUCT PREJUDICIAL

P G 203-10, Page 1, Paragraph 2 – PROHIBITED CONDUCT

6 Said Police Officer Eliseo Morales, while on-duty and assigned to the 75th Precinct, on or about June 3, 2009, in the vicinity of 2987 Fulton Street in Brooklyn, did fail to conduct a proper investigation, to wit said police officer failed to send out proper radio transmissions and properly categorize the incident

P G 207-07, Page 1 – PRELIMINARY INVESTIGATION OF COMPLAINTS

The Department was represented by Adam Sheldon, Esq and Jamie Moran, Esq ,  
Department Advocate's was represented by John Arlia, Esq

The Respondent, through his counsel, entered a plea of Not Guilty to the subject  
charges in Disciplinary Case No 85625/09 The Respondent entered a plea of Guilty to  
the subject charges in Disciplinary Case No 2010-3090 and testified in mitigation of the  
penalty A stenographic transcript of the trial record has been prepared and is available  
for the Police Commissioner's review

### DECISION

#### Disciplinary Case No 85625/09

The Respondent is found Guilty as charged

#### Disciplinary Case No

The Respondent, having pled Guilty, is found Guilty as charged

### SUMMARY OF EVIDENCE PRESENTED

#### The Department's Case

The Department and the Respondent entered into a stipulation regarding the  
testimony of Jason Samuels and agreed to the admission of certain evidence The  
Department also called Sergeant Joseph Clarno as a witness

Stipulation

The following is the text of the stipulation

Both parties to the above captioned matter do voluntarily agree and stipulate to the following facts and circumstance to be true and accurate

- 1 That this stipulation be admitted into evidence as Court's Exhibit #1
- 2 That if the Department were to call Agent Jason Samuels Immigration and Customs Enforcement Agency his testimony would legally and sufficiently establish the following
  - a Department Exhibit #1 is a fair and accurate recording of the telephone conversations between Respondent and Mr [REDACTED] as recorded by the Immigration and Customs Enforcement Agency (ICE) of the Federal Government in the first half of 2007
  - b That Department Exhibit #1 is admissible for the truth of the matter asserted therein
  - c That Department Exhibit #1A is a fair and accurate translation and transcription of seven (7) of the phone calls contained in Department Exhibit #1
  - d That Department Exhibit #2 is a complete copy of the line sheets generated by ICE in relation to Department Exhibit #1
  - e That Department Exhibit #3 is a PBA card that was recovered by ICE the person of Mr [REDACTED] at the time of his arrest for trafficking in narcotics

Sergeant Joseph Clarino

Clarino, a 29-year member of the Department, is currently assigned as the commanding officer of the Internal Affairs Bureau (IAB) Group 25. He testified that on July 25, 2007, his group received a notification from Immigrations and Customs Enforcement (ICE) that "they had a title 3 open and that [the Respondent] was overheard on the wire talking to a target of that investigation." At the time, Clarino was an investigator in the group but had not yet been assigned commanding officer. He did not



personally work on the investigation into the Respondent's alleged misconduct, but he

From his review of the file, Clanno learned that the Respondent was heard requesting a \$400 fee to assist a target of the ICE investigation ([REDACTED]) to remove a vehicle owned by a friend of his from custody at the 75 Precinct. The commanding officer of Group 25 at the time, Lieutenant John Donnelly, assigned Sergeant Kevin Byrnes to investigate the matter.<sup>1</sup> Byrnes contacted ICE and set up a meeting to obtain a copy of the title 3 and any line sheets they might have. Clanno agreed that those items were recovered but was unaware of any other documents recovered during that meeting. Byrnes also reviewed all pertinent Department documents including roll calls, command log entries, and vehicle vouchers. Byrnes also interviewed [REDACTED] as part of his investigation.

[The parties stipulated that a compact disc recording and transcript of telephone conversations between the Respondent and [REDACTED] be entered into evidence as Department's Exhibits (DX) 1 and 1A, respectively. Seven conversations were recorded by ICE during the period between March 7, 2007 and April 24, 2007. They were originally spoken in Spanish and subsequently translated into English. In a March 8, 2007 telephone call, [REDACTED] explained to the Respondent that a friend's car had been taken into police custody after the driver was arrested for a suspended license. The Respondent asked [REDACTED] if he "fixed" the situation by telling the arresting officer that [REDACTED] and the Respondent knew each other. The Respondent offered to retrieve the car for [REDACTED]. In a conversation the next day, the Respondent told [REDACTED] that he spoke to a "girl" about

---

<sup>1</sup> Donnelly is deceased, and Byrnes is currently on terminal leave pending retirement.

getting the car released and that it would cost \$400 for her to "take [the car] off the computer." The Respondent and [REDACTED] agreed that the Respondent would get the girl to take the car off the computer and that [REDACTED] would give the Respondent the money afterwards. Then, in a March 15, 2007 telephone call, the Respondent offered to buy the car from [REDACTED]. [REDACTED] told the Respondent that the Respondent could have the car if he gave [REDACTED] back the \$400.

The parties also stipulated that the line sheets obtained by Byrnes from ICE Agent Jason Samuels be entered into evidence as DX 2, and that a Patrolmen's Benevolent Association (PBA) card that was recovered by ICE from [REDACTED] at the time of his arrest for narcotics trafficking be entered into evidence as DX 3. The card has [REDACTED]'s name printed on the front and was signed by the Respondent on the back. Court Exhibit 1 is a copy of this stipulation, signed by both attorneys on the day of trial.

DX 4 is a copy of the relevant page from the 75 Precinct Property Index. It indicates that a 1994 Honda Accord with Pennsylvania license plates, belonging to [REDACTED], was vouchered for safekeeping by Police Officer Ho on March 7, 2007 and released from police custody on March 12, 2007.

DX 5 is a copy of an Investigating Officer's Report, prepared by Byrnes, regarding his interview with [REDACTED].<sup>3</sup> Detective Anna Castro, an investigator from IAB Group 25, was also present at the interview conducted at the "Polo Liquor Store" at 3440 Atlantic Avenue, within the confines of the 75 Precinct. According to the report, dated May 28, 2008, [REDACTED] stated that he and the Respondent had been acquainted with each other since an incident to which the Respondent responded several years earlier at the

<sup>2</sup> [REDACTED]'s surname is spelled as "[REDACTED]" in DX 5 (copy of Investigating Officer's Report) and "[REDACTED]" in the trial transcript.

<sup>3</sup> Clarino testified that this interview was not recorded.



liquor store [REDACTED] owns. About [REDACTED]'s car, [REDACTED] stated that after [REDACTED] had been arrested, [REDACTED] called the Respondent to ask about getting the car out of police custody. The Respondent later called [REDACTED] back and told him that an unidentified female wanted \$400 for the car to be released. [REDACTED] agreed to the price and accompanied the Respondent to the precinct to retrieve the vehicle. The car was eventually sold to [REDACTED]'s brother, but [REDACTED] could not recall if the sale took place before or after he gave the Respondent the money to retrieve the car.

DX 6 and 6A are the tape and transcript, respectively, of a second interview Byrnes conducted of [REDACTED]. This was a telephone interview conducted on June 4, 2008. In the interview, [REDACTED] stated that he could not remember exactly when he gave the Respondent the \$400, but he believed that it was before the car was retrieved. He [REDACTED] it a payment for the car but rather a gift to the Respondent for doing him a favor.]

Clarino testified that a registered owner with proper documentation is permitted to retrieve a vehicle that is in Department custody for safekeeping. He was not aware of any procedure that allows someone other than the registered owner to retrieve a car.

On cross-examination, Clarino testified that he did not know the method by which [REDACTED] gave the Respondent the money, and nowhere in the file was there an indication of a hand-to-hand cash payment. Clarino did not know where the payment took place. He stated that Castro, who is still a member of the Department, went to the May 28, 2008 interview of [REDACTED] in case a Spanish-English interpreter was necessary.

The Respondent's Case

The Respondent testified in his own behalf

The Respondent

The Respondent, a 19-year member of the Department, is currently assigned to the Housing Bureau, Viper 11. Before being placed on modified duty assignment, he worked in the 75 Precinct for 17 years. He described his relationship with the community members of the 75 Precinct as great. Everybody knew him, and he received a "top cop award" from the community board in 1999. He also received the John Hines Award from the Brooklyn District Attorney's Office in 2007.

The Respondent testified that he is on restricted duty because he had [REDACTED]

[REDACTED] He also had [REDACTED] He is also [REDACTED]

[REDACTED] In 1996, he pled guilty to Department charges relating to alcohol, [REDACTED]

[REDACTED] He stopped [REDACTED]

[REDACTED] The Respondent testified that he takes responsibility for his conduct and suggested that his actions were a result of his [REDACTED]. He was under [REDACTED] during the incident. He agreed that as the senior officer at the scene, he had a greater responsibility than the other officers involved.

Respondent agreed that he gave members of IAB a hard time during his first official Department interview. He agreed that he was neither truthful nor straightforward during that interview. He explained that he did not want to get anyone in more trouble.

than they already were. Additionally, he stated that after he [REDACTED]

[REDACTED]

interview, he was trying to make things right by attempting to lie, but he can see now that lying only made things worse. After being presented with certain pieces of information, he eventually told the truth. He admitted his guilt to each of the specifications relating to the June 2009 integrity test.

The Respondent agreed that [REDACTED]

[REDACTED] The district surgeon sent him in front [REDACTED]

[REDACTED]

He testified that he did not wish to leave the Department because his job is all that he had ever done and all that he had ever wished to do. He stated that when he was not [REDACTED] he was "a damn good cop."

With regard to the charges relating to [REDACTED], the Respondent explained that he first met [REDACTED] when he was investigating a homicide in [REDACTED]'s neighborhood ten years ago. As part of the investigation process, the Respondent walked the neighborhood and asked neighbors for information. He met [REDACTED] during one of those interviews and struck up a friendship with him. [REDACTED] owned a whole building of businesses in the area, including a liquor store, the deli next to it, and a hair salon.

The Respondent testified that over the course of ten years he visited [REDACTED]'s apartment three or four times a week after work. During that time, the Respondent worked in the 75 Precinct and always worked from 4 p.m. to 12 a.m. In the back room, [REDACTED] and his friends would be drinking and hanging out. Both the Respondent and [REDACTED] would drink to inebriation. The Respondent agreed that he had a special arrangement

with [REDACTED] for purchasing food and liquor. He explained that [REDACTED]'s wife worked the cash registers at his stores, so the Respondent had set up a tab and would pay the balance at the end of each month. He would buy scotch from [REDACTED] three or four times a week. He denied knowing that [REDACTED] was also dealing illicit drugs.

The Respondent acknowledged that [REDACTED] called him about retrieving a car that was in police custody. The Respondent testified that he did not think retrieval of the car would be a problem since it was "not forfeiture." He confirmed that he told [REDACTED] that he spoke to a woman and that it would cost \$400 for her to clear the car from the computer system. The Respondent conceded that in actuality there was neither a woman involved nor a computer to be cleared. He explained that he told [REDACTED] about the money because he wanted [REDACTED] to see him as the kind of guy who could take care of things for him, but he did not want [REDACTED] to ask him for another favor once he had cleared this one up. According to the Respondent, he never actually planned on accepting \$400 from [REDACTED]. He explained that once [REDACTED] believed that retrieval of the car would cost \$400, he would tell [REDACTED] in the end not to worry about the payment, thereby making it appear like he had done [REDACTED] a \$400 favor for nothing and making himself look like a "superstar."

The Respondent testified that he never received \$400 from [REDACTED] in cash, store credit, or in any other form. The Respondent agreed that during a March 15, 2007 telephone call, [REDACTED] made a reference to giving him \$400. The Respondent explained that [REDACTED] was referring to an occasion when [REDACTED] showed him in a book where it was written that the Respondent had a \$400 credit. The Respondent did not believe that the credit was true since [REDACTED]'s wife ran both the grocery and liquor stores, and he knew that [REDACTED]'s wife would not honor such a credit. The Respondent did not point this out to [REDACTED].

since they were drinking at the time, and it was not something that he wanted to argue about. He explained that he and [REDACTED] "talked a lot of BS" while they were drinking. He further explained that he did not challenge [REDACTED] when [REDACTED] subsequently referenced the credit during the recorded telephone conversation since he did not want to "piss off" the guy he bought liquor from. He denied ever asking [REDACTED] about the credit. According to the Respondent, [REDACTED] would have been "pissed" if he had challenged the credit because [REDACTED] knew that the Respondent dealt with [REDACTED]'s wife, and the challenge would have questioned [REDACTED]'s manhood. The Respondent acknowledged that he did not have an answer when he was asked about the credit during his official Department interview. He explained that he had not heard the telephone recording at that point, and his recollection of the conversation was not clear.

The Respondent testified that the car was picked up from police custody by [REDACTED] but he facilitated the process by bringing [REDACTED] to the station house. The Respondent was not certain exactly when [REDACTED] picked up the car, but he believed it was several days after the March 8, 2007 conversation in which [REDACTED] first mentioned the car. The Respondent recalled a conversation he had with [REDACTED] in regard to purchasing the aforementioned vehicle while the two were drinking. Although he did not remember the entire context of the conversation, he thought that the two were just talking "BS." He later told [REDACTED] that he did not actually intend to buy the car. According to the Respondent, he was never interested in purchasing a vehicle from [REDACTED]. In another conversation, [REDACTED] asked the Respondent about getting a second vehicle out of police custody. The Respondent refused to help [REDACTED] with the second car even though [REDACTED] asked him repeatedly.

On cross-examination, the Respondent confirmed, in reference to the integrity test on June 3, 2009, that he believed the property found in the laundromat was the proceeds of a robbery. He did not believe that the property was abandoned, but that it actually belonged to another individual and could be ultimately returned to its proper owner. The property included three shirts, but the Respondent could not recall if there were tags on them. There were also a sweatshirt, two Yankee hats (which did have stickers on them), and a plastic see-through rubber pellet gun in its original packaging.

The Respondent agreed that one of the specifications that he has pled guilty to in \_\_\_\_\_ was failing to make proper radio transmissions and to properly categorize the job. He agreed that the job was categorized as a "91," which meant that no crime occurred. He did this despite the fact that he believed the property was part of a robbery. He explained that an accurate categorization for the incident \_\_\_\_\_, which specifically deals with property being vouchered or needing to be vouchered. The Respondent was with his partner, Police Officer Jillian Zolli, the entire time that evening. He could not recall whether it was he or Zolli who actually transmitted the disposition for the job.

The Respondent agreed that when property is collected from one incident, it is supposed to be vouchered by the same person in the same time period. He agreed that in this case, though, the property was separated. The three shirts and the sweatshirt went into the patrol car with Zolli and the Respondent, and the remaining property went with the anticrime team. The Respondent was aware at that point in time that this was not proper vouchering technique, and he acknowledged that by the time the radio transmission was made, he knew that the property was never going to be vouchered.

Although he did not actually see any officer try on a hat, he recalled one of the officers saying something to the effect of "I have a new baseball hat now " He did not recall hearing a member of the anticrime team telling one of the female officers to take some things home for herself He stated that if something like that had occurred, he would have remembered it The Respondent stated that while he did not recall telling Zolli not to keep the shirts in her locker or in the car in an effort to avoid getting caught with the property, it was possible that he advised her in that way He did not feel at the time, though, that there was something that needed to be covered up

The Respondent first learned that the incident at the laundromat was an integrity test during a telephone call from his attorney on June 9, 2009 He did not "come clean" with the Department at that point Instead, the next day he orchestrated the return of the property by getting in touch with Zolli and Police Officer Cory Smith and asking them to gather whatever property they had and return it to the command He agreed that after getting the three shirts back from Zolli, he gave them to Smith and instructed Smith to voucher all of the property at that time He explained that he wanted the property vouchered so that no one else would get in trouble He believed that Smith vouchered the items right away In the weeks after the property was collected and vouchered, the Respondent told Zolli that he would be willing to take responsibility if anything happened Although he was aware that Zolli had committed misconduct by taking the shirts home with her, he believed that as the senior officer it was his duty to shield her

The Respondent reiterated that he provided false information in his official Department interview on July 21, 2010 The Respondent took two breaks during the interview to speak with his attorney Prior to the first break, the investigator informed



him that he was believed to be making false statements. The Respondent conceded that he told the investigator that the anticrime team took all of the property found in the laundromat, that he did not know if Zolli had taken any property, and that he first learned that the incident was an integrity test on June 27 or 28, 2009 via rumors going around the command.

The Respondent and [REDACTED] had been friends for many years prior to this incident. They spent time together socially and regularly drank together. In 2007, the Respondent gave [REDACTED] a personalized PBA card with [REDACTED]'s name on it. This was the card that was found on [REDACTED]'s person when he was arrested for narcotics trafficking.

The Respondent denied that he actually had anything to do with recovering [REDACTED]'s car, but he conceded that he made [REDACTED] believe that he did. The Respondent disagreed with Clarino's testimony regarding the vehicle retrieval procedure. He believed that with the permission and identification of the lawful owner, somebody else would be entitled to pick up the car. He stated in his official Department interview, however, that he was aware that [REDACTED] would be able to retrieve the car only with the Respondent's help. Although the Respondent recalled making this statement, he explained that he must have misspoken during the interview since it was his belief at the time that a friend could pick up a car, so long as he/she had the owner's identification. Although the Respondent allowed [REDACTED] into the station house property room and told the attendant that [REDACTED] needed help, he did not ask that [REDACTED] receive preferential treatment.

With regard to the \$400, the Respondent agreed that he initiated the conversation about money and that he did so in part to stop [REDACTED] from asking for favors. He believed that asking [REDACTED] for \$400 was necessary to prevent future favors. The Respondent

testified that he finally told [REDACTED] that the \$400 would not be required the first time that he went to [REDACTED]'s store after the car's recovery. He clarified that this occurred a night or two after he first told [REDACTED] he needed the money. After the car's recovery, the Respondent and [REDACTED] remained friends. They continued to see each other socially and drink together.

On redirect examination, the Respondent explained that he did not mention the store credit in his official Department interview because he did not realize its significance until after he heard the taped conversations. The Respondent did not mention [REDACTED] during the interview because he did not want to get sent back [REDACTED]  
[REDACTED]

#### FINDINGS AND ANALYSIS

Under Disciplinary Case No. 2010-3090, the Respondent, having pled Guilty, is found Guilty of all specifications as charged.

Under [REDACTED] - [REDACTED] the Respondent is charged with two specifications involving bribe receiving. Specification No. 1 alleges solicitation of a bribe while Specification No. 2 alleges acceptance of a bribe. The alleged bribe came from one [REDACTED] in the amount of \$400 and the purpose was so that [REDACTED] could obtain a car that had been vouchered for safekeeping by the 75 Precinct.

The evidence of the bribe is found on telephone conversations between the Respondent and [REDACTED] recorded by the Immigration and Customs Enforcement agency (ICE) as part of an investigation into [REDACTED] for trafficking in narcotics. The conversations

were intercepted on a wiretap and neither [REDACTED] nor the Respondent was aware of the recording at the time <sup>4</sup>

Entered into evidence on consent were recordings of seven conversations. For the most part these conversations are in Spanish. Each recording is accompanied by a line sheet and synopsis prepared by the ICE investigators. Each conversation is also accompanied by an English language translation of the conversation.

[REDACTED], 2007 [REDACTED] called the Respondent. He connected with the Respondent's answering machine and left a message asking the Respondent to call him back.

The second conversation was on the next day, March 8, 2007. The Respondent called Polo. Nothing of substance was said but Polo agreed to call back.

The third conversation occurred later that day [REDACTED] told the Respondent that he had a friend who lent him a car a long time ago. The car had Pennsylvania license plates and the friend was in Santo Domingo. The police, he said, found that the insurance was not good because his friend had a suspended license. The driver was arrested. The Respondent asked if this occurred on Staten Island and [REDACTED] explained that it happened in front of [REDACTED]'s liquor store which, testimony established, was in the 75 Precinct. This is the precinct where the Respondent worked at the time and has worked most of his career.

The Respondent asked [REDACTED] was and [REDACTED] identified him as "Bobby Ho." The Respondent asked if the officer "fix[ed] it," adding, "Did you tell him you knew me and he fixed it?" [REDACTED] said the officer would not do so and he arrested the driver.

---

<sup>4</sup> The conversations are mostly in Spanish with some English. The Court was able to listen to and follow the conversations using the transcripts (transcribed in English) which were placed in evidence on consent and stipulated to be accurate (Exhibits 1A and 1A).

████ said that the person who was arrested in connection with this incident had already seen a judge and had been released with a \$250 fine. █████ then explained that his concern was with the car, a 1994 Honda Accord. █████ stated, "That's why I was calling you. I don't want the city to take the car. If I can't find the title, I want you to get it for yourself." The Respondent answered this by saying, "No, no, no. I'll get it out in your name. Don't worry."

Later in the conversation the Respondent again referenced the car stating, "Yes, the car should be there. I'll get them to get it out for you, don't worry." █████ explained that it is a car he used to go to work and the Respondent reiterated "Don't worry. I'll get them to give it to you." The Respondent then indicated that he would come over to see █████ and pick up the papers related to the impoundment of the car so that he would know which car he was looking for.

The fourth conversation in evidence occurred the next day, March 9, 2007. The Respondent called █████. After their initial greetings the Respondent said, "Ok. Ok. I talked to the girl yesterday. She wants me to give her \$400 for her to take it off the computer." █████ responded, "No problem, no problem. I'll give it to you." The Respondent asked if he was sure, and █████ replied that he was coming now and that when he got to the liquor store he would call the Respondent. The Respondent then said, "I'll tell you what I am going to do." He continued, "I'm going to get her to take it off the computer and Sunday I'll come see you at your store, at the Liquor Store." █████ responded, "No problem at all. I got the money. If you want to get the money later, it's no problem with me."

The 75 Precinct Property Index indicates that Police Officer Ho vouchered a 1994 Honda Accord on March 7, 2007. The car, which had been held for safekeeping was released, according to the index (DX 4), to one [REDACTED] on March 12, 2007. Judicial notice is taken of the fact that March 12, 2007 was a Monday.

The next conversation in evidence occurred on March 15, 2007. The Respondent called [REDACTED]. The Respondent asked [REDACTED] what he wanted to do with the car. [REDACTED] said that he thought the Respondent wanted it for his daughter. The Respondent replied, "Yeah, but that was when we were drinking." The Respondent then said that if [REDACTED] wanted him to, he would buy it. [REDACTED] then said, "No, Morales. The \$400 I gave you, that's it. Give it back to me, you keep the car." The Respondent seemed not to understand and [REDACTED] repeated himself stating, "The \$400 I gave you, give it back because he's the one who gave it to me. So I'll give it to him and you take the car, because the car is mine."

There is then some talk about another car that had been impounded at the 75 Precinct and there is some discussion of getting that car out too and charging the owner a little bit more. (There is no evidence that any other car was removed by the Respondent.)

There are two additional conversations in evidence which show the close nature of the relationship between the Respondent and [REDACTED] but they do not seem to relate directly to the conduct charged.

The Department also put into evidence two interviews conducted with [REDACTED]. The first interview was conducted on May 28, 2008 by Sergeant Kevin Byrnes. This interview was not recorded and the only evidence the Department entered with regard to this conversation was a summary worksheet (DX 5). A follow-up telephone interview

was conducted by Byrnes on June 4, 2008. This conversation was recorded and the evidence regarding this interview was a tape recording of it along with a transcript (DX 6 and 6A)

In the summary of the May 28 interview, Byrnes indicated that [REDACTED] had said that he paid the Respondent \$400 dollars to retrieve the vehicle. During the telephone interview, [REDACTED] said something somewhat different. Initially, in that conversation [REDACTED] said that the police took the car and the Respondent got it back. When asked how much he had paid the Respondent to get it back, [REDACTED] answered \$400. He was then asked if he made the payment before or after the car was retrieved. At first [REDACTED] said that he did not recall exactly but then added

No, just I not pay, like I said I give it to him like a gift  
It's no—I not pay money for to get the car. He do me a  
favor, like I told you, because I work in the community.  
It's like in other word, I not pay for that. It's a favor I do to  
him like I told you, like I give the meat for the barbeque—  
t-shirt, they give me—so it's like a volunteer.

The Department's evidence paints a strong picture of improper and criminal conduct on the part of the Respondent. The evidence shows that the Respondent offered to help get a car released from police custody. He then solicited a \$400 payment for rendering this service. Whether the money was for himself or to be passed along to someone else, there is no way to describe this transfer of money other than as a bribe.<sup>5</sup> There are then further intercepted conversations in which both [REDACTED] and the Respondent acknowledged that the \$400 payment had been made by [REDACTED] and received by the Respondent.

---

<sup>5</sup> The Respondent indicated that he made up the story about the "girl" and there is no evidence of any involvement by any other Department employee, male or female.

The content of the intercepted conversations are corroborated in various ways. First is that the vehicle identified in the conversations was in fact released from the 75 Precinct. Indeed, in the conversation the Respondent indicated that something had to be done with computer records before the vehicle could be released.

It should be noted that there is no evidence that Department computer records were tampered with. That supports the notion that the "girl" did not exist and that the Respondent solicited the money for himself.

Additional corroboration comes from the interviews with [REDACTED]. It is clear that [REDACTED] was backtracking in his second conversation with Byrnes, but his effort to minimize the situation is irrelevant. Whether he claimed it was a "gift" or bribe, [REDACTED] confirmed that he gave the Respondent \$400 to retrieve the car from the custody of the 75 Precinct.

The Respondent interposed several lines of defense in regard to these charges. Some of these claimed defenses were, frankly, nonsensical and some contradicted others.

One line of defense was that the Respondent asked for the money to get [REDACTED] to stop bothering him for favors. The best and simplest way for a public servant to get someone to stop asking for favors is to tell that person that they cannot do favors and directly telling them not to ask. Of course there are many ways of saying that so as not to be offensive but the Respondent used none of those. Instead, he eagerly agreed to get the car released and repeated that offer.

The Respondent's professed desire to get [REDACTED] to stop asking for favors is further belied by what he said, in that very same conversation, about Officer Ho, the officer who vouchered the car after arresting the driver. He asked [REDACTED] if he had told Officer Ho that he knew the Respondent and if based on that knowledge Ho had "fixed" it. Both [REDACTED]



and the Respondent seemed disappointed that Ho did not "fix" it but instead did what he was supposed to do arrest that man and voucher the car. This part of the conversation underscores the fact that the Respondent was hardly averse to trying to do favors for [REDACTED] and is, of course, inconsistent with his professed desire to dissuade [REDACTED] from asking for favors.

In the next conversation with [REDACTED] the Respondent raised the issue of the need to pay \$400 to get the car released. The Respondent claimed he raised the issue of \$400 to get [REDACTED] to stop asking for favors. This is so ridiculous, it hardly bears comment, however, because the Respondent has raised it, some comment is necessary. Simply put, there is nothing in that conversation or the conversation that followed that would even hint that the \$400 was intended to be a "deal breaker." Quite the contrary, the conversations indicate that a bribe was requested, acted on and received.

The Respondent has also raised a defense that he and [REDACTED] are drunks and that they, in his words, "talked a lot of BS" and "nonsense." He further argued, in essence, that these were private conversations and essentially that these conversations have no meaning. This Court accepts this argument to some limited degree. While it is inappropriate to joke, even in private conversations, about corruption, people do say things they do not mean. However, when that occurs it is usually made clear very quickly that the words are not linked to deeds. In this case, there were a series of conversations over a period of days where no joke is acknowledged in any way at any time. Instead, the conversations reflect a series of events in which a bribe is solicited, in which payment of the bribe is acknowledged and in which governmental action is taken.

Another line of defense the Respondent has raised is that no payment was ever received. He claims that the payment was to be in the form of some kind of store credit. The Respondent explained that he shopped both for groceries and liquor at [REDACTED]'s store. He claimed that [REDACTED] was going to pay him with credit at the store. The Respondent explained that [REDACTED]'s wife ran the business end of the store and that she would never give the Respondent the credit and as a result he never received nor expected to receive the \$400. The Respondent explained that [REDACTED] did not know that his wife would never give the Respondent the \$400 credit and that he did not tell [REDACTED] that he did not and would not get the money to save [REDACTED] from embarrassment.

Explaining why he did not tell [REDACTED] that he did not get the money, the Respondent stated that [REDACTED] would be "pissed off" because "[REDACTED] knows that I know that I deal with his wife and that would [be] like putting his manhood on the, he's man of the house what he says goes so I am not going to go near that with him."

As part of this so-called explanation, the Respondent, as his attorney described it, wanted [REDACTED] to think he was a "hero."

Even if one were to accept this convoluted tale, which apparently was not made known during his official Department interview, the Respondent allowed [REDACTED] to believe that he had paid the Respondent to release a car which could not otherwise have been released to him. That might explain the "hero" part but it still leaves the Respondent with having committed the crime of bribe receiving. If nothing else, he purchased [REDACTED]'s esteem for his ability to fix things for the value of \$400. But this tale is not believable and is one of a number of unbelievable things the Respondent said about this case.

When questioned by his attorney as to why he asked [REDACTED] for \$400, the

Respondent answered

I thought it was a great way for him to see me as somebody who can take care of things for him and twofold, he wouldn't ask me again once I clear it up for him for another favor

When asked by his attorney to explain why this would lead [REDACTED] not to ask for a favor again, the Respondent replied

If I do you a favor that's going to cost you money and then I come to you and I go don't worry about it, I took care of it, it's a huge favor It's a huge favor I took care of it I took care of the money problem there is no more money problem You understand?

As has been noted previously, there is a simple and straightforward way to get someone to stop asking for a favor and that would be to decline to do so The Respondent seems to be saying that his asking for money was intended to be a deterrent

His position is, of course, internally conflicted, if you do someone a "huge favor" they are only likely to ask you for more favors The fact that money has been asked for only makes clear that if the favor is worth the price, the Respondent, as a public servant, could be bought

At the end of his last response, the Respondent asked if his answer was understood and the Court replied that it was not The Respondent was asked again to explain and he gave the following answer

I said to him, to [REDACTED] the girl wants \$400 to take care of it so that I can go to him and say don't worry, I took care of the \$400 you don't have to pay it then I would look like a superstar to him

This answer is still illogical and is in direct conflict with his other tale about [REDACTED]'s wife. In that tale, [REDACTED] thought he had paid the \$400, while in this version, his superstar or hero status came from [REDACTED] believing that he had taken care of the \$400 expense. Both versions are obviously inconsistent with his claim that he wanted [REDACTED] to stop asking for favors.

At this point, it should be noted that the Respondent mentioned that he is a [REDACTED]. He stated that since these incidents, he has gone through [REDACTED]. At the outset of the trial, this Court questioned the Respondent, in the presence of his attorney, about his [REDACTED]. He insisted that he was not under the influence of any drugs or alcohol and he did not appear to be. It is apparent that his farfetched and inconsistent answers are not the result of intoxication but are the result of his attempt to avoid responsibility for the serious misconduct he engaged in.

Nor is there any indication that the misconduct itself was the result of [REDACTED]. The Respondent's comments in these conversations were clear and coherent. He initiated the discussion about favors for money and by his own admission invented the "girl." This device enabled him to divert the pressure of him asking [REDACTED] for money directly, putting

His conduct was not motivated by alcohol but by greed and the ability to abuse his governmental power and authority.

The Respondent claims that because the Department cannot establish exactly when he received the \$400, it has not proven Specification No. 2 which alleges that he received that money. This Court disagrees. The credible evidence is that the Respondent did receive \$400 from [REDACTED] for the purpose of having the Respondent release the vehicle.

from its impoundment at the 75 Precinct. Whether he received the money before or after the car was released, it was in connection with an agreement made in advance of that release.<sup>6</sup>

The Respondent also argues that [REDACTED] could have had the car released without the Respondent's help. This argument does not mitigate the situation. The Respondent acknowledged that he accompanied [REDACTED] when he went to get the car and facilitated its release. The Respondent, while denying he actually did anything to get the car released, admitted, "I made [REDACTED] believe that I did."

The law is clear that the bribery statute requires "no act beyond the agreement or understanding," People v Charles, 61 N.Y.2d 321, 326 (1984). Further, even if a public servant does not have the authority to engage in the conduct sought by the bribe giver, if the public servant has "colorable" authority to do the act, the crime of bribery has been committed. See Charles, 61 N.Y.2d at 326, People v Chapman, 13 N.Y.2d 97, 101-02 (1963). Colorable authority exists when a bribe is offered to a public official "to act corruptly in a manner to which he bears some official relation, though the act itself may be technically beyond his official powers or duties," see People v Lafaro, 250 N.Y. 336, 342 (1929). In this case, the Respondent had colorable authority to effect the release of the car and took action intended to make the bribe giver believe that he was in exercising that authority.

The Respondent argues that with regard to Specification No. 1, he did not have the necessary culpable mental state to commit bribery—that is, that he did not "intend" to

---

<sup>6</sup> The conversations (DX 1 and 1A) provide evidence that the money was paid on Sunday, March 11, 2007. The reason for this is that in the March 9, 2007 conversation the Respondent stated that he would come to the store on Sunday to get the money, and in the March 15, 2007 conversation [REDACTED] spoke about the \$400 he had given to the Respondent.

solicit money The solicitation was some kind of a ruse in which he asked for money but he did not mean it The credible evidence is that he indeed did intend to obtain \$400 for performing what he himself described as a "huge" favor for [REDACTED]

The credible evidence establishes that the Respondent committed the crime of bribe receiving by soliciting and accepting money upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced, in that he solicited and accepted \$400 from [REDACTED] to help Mr [REDACTED] recover an automobile that was in Police custody The Respondent's conduct also violated the Patrol Guide The Respondent is found Guilty of Specification Nos 1 and 2

#### PENALTY


In order to determine an appropriate penalty, the Respondent's service record was examined See Matter of Pell v Board of Education, 34 NY 2d 222 (1974) The Respondent was appointed to the Department on June 30, 1992 Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum

The Respondent has been found Guilty of soliciting and accepting a bribe He has also been found Guilty of failing an integrity test by failing to voucher property, failing to safeguard that property, transmitting a radio signal that was intended to conceal from the Department the existence of that property, failing to report misconduct related to the taking of that property, attempting to cover-up the improper handling of that property and

further trying to cover-up the incident by failing to provide accurate information, at least initially, at an official Department interview

The Respondent has indicated that he no longer wants to be a police officer but that he would like a penalty short of termination so that he can collect a disability pension. These two cases display a pattern of conduct in which the Respondent ignored his responsibilities as a police officer and abused the authority that comes with it. In addition, each case involves significant ethical failures. There is no alternative but to recommend that the Respondent be DISMISSED from the New York City Department.

Respectfully submitted,

  
Martin G. Karopkin  
Deputy Commissioner – Trials

**APPROVED**  
NOV 01 2011  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER



POLICE DEPARTMENT  
CITY OF NEW YORK


From Deputy Commissioner – Trials  
To Police Commissioner  
Subject CONFIDENTIAL MEMORANDUM  
POLICE OFFICER ELISEO MORALES  
TAX REGISTRY NO 902046  
DISCIPLINARY CASE NOS 85625/09 & 2010-3090

In 2010, the Respondent was rated 4.0 "Highly Competent" on his annual performance evaluation. He was rated 3.5 "Highly Competent/Competent" in 2009 and 3.0 "Competent" in 2008. He has been awarded nine medals for Excellent Police Duty, four for Meritorious Police Duty, and three Commendations. [REDACTED]

[REDACTED] In September 2009, he was placed on Level II Discipline Monitoring.

The Respondent has been the subject of two prior disciplinary adjudications. In 1996, he forfeited 60 suspension days and was placed on one year dismissal probation for being unfit for duty due to the overindulgence of alcohol and discharging a round from his firearm during a dispute with his [REDACTED]. In 2001, he forfeited 20 vacation days for being absent without permission while on sick leave and impeding a Department investigation.

For your consideration

  
Martin G. Karopkin  
Deputy Commissioner – Trials